



San Diego City Attorney MICHAEL J. AGUIRRE

NEWS RELEASE

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E-MAIL PROVES MAYOR MISREPRESENTED FACTS REGARDING CITY ATTORNEY'S CONCERNS OVER FINANCIAL SCHEME TO BORROW MONEY

San Diego, CA—An e-mailed dated April 1, 2008 demonstrates Mayor Jerry Sanders knowingly misrepresented the facts when he appeared before the City Council on April 22, 2008, chastising the City Attorney for not earlier raising concerns over the Mayor's proposal to raise \$108 million in lease revenue bond proceeds to address the deferred maintenance needs of the City of San Diego. The City Council backed the Mayor in a 7-1 vote over the objections of City Attorney Michael Aguirre.

"Unlike the previous City Attorney, I will not rubberstamp any financial schemes that the Mayor or City Council want to push through without a thorough legal review," said City Attorney Aguirre.

Although, the e-mail is attorney-client privilege, Aguirre released the communication with redactions. The e-mail clearly shows the City Attorney was concerned about the financing mechanism and asked for a continuance in order to research case law that would support the Mayor's plan to use the downtown San Diego Police Headquarters as collateral for the bond, even though the pledged property would not benefit from the bulk of the money raised for repairs or improvements.

The April 1, 2008 e-mail is from the City's outside bond counsel John McNally to the Mayor's Chief Operating Officer Jay Goldstone, his Director of Debt Management Lakshmi Kommi, and Chief Deputy City Attorney Mark Blake with copies to outside bond counsel Arto Becker and City Attorney Aguirre.

"We had considered such cases in our analysis, and we are currently preparing a memo analyzing the relevant law for review by the City Attorney. The two week continuance will allow sufficient time to prepare the memo, to allow the City Attorney to carefully consider it, and to have whatever follow-up calls may be needed to reach a consensus."

Yet the Mayor's declaration to the City Council on April 22 stated otherwise and was false:

"At no time during those discussions did the City Attorney's Office or the City's Disclosure or Bond Counsel raise any concern."

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In fact, at a morning meeting prior to the City Council's consideration of the Mayor's bond proposal, Chief Deputy City Attorney for Finance and Disclosure Mark Blake, asked that the Mayor support a request for continuance so that additional time could be given to a careful analysis of the objections raised by the City Attorney in his final review of this matter. The request was made as a courtesy to the Mayor. It was rejected by the Mayor's Chief Operating Officer Jay Goldstone, his Director of Communications Fred Sainz, and his Policy Advisor Julie Dubick.

In his April 22nd remarks to the City Council, the Mayor also demonstrated that he is not fully knowledgeable about the process for preparing ordinances for City Council review. It is the role of the City Attorney's Office to draft ordinances for review containing the most up-to-date legal facts that are known at the time. Such ordinances are subject to change as legal issues are tested finally and conclusively by the City Attorney. Therefore, the fact that the City Attorney's Office prepared and signed the ordinance for discussion by the City Council should not infer that all legal issues had been resolved according to law.

The City Attorney also provided the City Council with a legal opinion on April 21, 2008 regarding the Mayor's proposed ordinance to authorize the financing mechanism. Aguirre states, "Thus, it is the opinion of the City Attorney that the Bonds must be approved by the voters especially when, as here, the subject matter of the proposed lease is not the beneficiary of the bond proceeds."

To view the legal opinion, visit www.sandiegocityattorney.org, click "Significant Reports and Legal Documents."

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